IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7359 of 1999

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AA DOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7359 of 1999

MR IS SUPEHIA for Petitioner No. 1

MR PANDYA, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 26/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. A.s.Supehia for the petitioner and learned AGP Mr. Pandya appearing on behalf of the respondents.

2. In the present petition, the prayer is made by the petitioner that he was appointed on 30.12.1991 and removed from service on 28.1.2003. During the pendency of the departmental inquiry, by notification dated 20.1.1998, the pay scale has been revised by the State Government w.e.f. 1.1.1996, therefore, the request was made by the petitioner to the respondent authority to revise his suspension allowance on the basis of notification dated 20.1.1998.

3. Learned AGP Mr. Pandya appearing on behalf of the respondent authority has submitted that in notification dated 20.1.1998 specific Rule 7 sub-Rule 2 (C) is incorporated to the effect that; where a government servant is under suspension, he shall continue to draw subsistance allowance based on existing scale of pay and his pay in the revised scale of pay shall be subject to final order on the pending disciplinary proceeding. Therefore, learned AGP Mr. Pandya has submitted that now the disciplinary proceeding is come to an end by passing order of punishment dated 28.1.2003 of removal of the petitioner and that removal is already challenged by the petitioner in Special Civil Application No. 9550 of 2003 which is pending before this Court. Therefore, learned AGP Mr. Pandya has submitted that this question/contention or prayer made in the present petition can be raised by the petitioner in Special Civil Application No. 9550 of 2003 where the punishment order of removal is under challenge and petitioner can amend the petition accordingly by making necessary relief.

4. In view of the submissions made by both the learned advocates and considering the fact that in notification dated 20.1.1998 specific Rule 7 sub-Rule 2(C) is incorporated to the effect that; during the suspension period if the departmental inquiry is pending then the suspended employee shall receive the subsistance allowance based on the existing scale of pay and not on the basis of revised pay scale. However, without expressing any opinion on this point that when the removal order is under challenge in Special Civil Application No. 9550 of 2003 before this Court, it is open for the petitioner to make necessary amendment in that petition with same prayer which has been made in the present petition and therefore, considering this fact, present petition is disposed of without expressing any opinion on merits. No order as to costs. Rule is discharged.

(H.K.Rathod,J)

Jayanti*